CF0000062633

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 528 /99

APPELLANT : Mahabir Son of Khursal Panika aged about 26 years Cultivator, resident of Bisesara, Police Station Marwahi Distt. Bilaspur.

VERSUS

RESPONDENT : The State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) CRIMINAL PROCEDURE CODE.

Dr. A.R.Karoria has ...

XI-HC-78

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..C.Y.A.NO.528/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Dhirendra Mishra, JJ.

23-2-2007:-

Miss Nirupama Bajpai, counsel for the appellant.

Mr. Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 9th January 1999 passed by the 4th Additional Sessions Judge, Bilaspur, Link Pendra Road, in S.T. No.241/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution is that one day prior to the day of the incident father of deceased Saraswati had gone to village Sindhaura. On that day, in the evening at about 6 p.m. accused/appellant Mahabir went to the house of his father-in-law Ratiram. He stayed there for a night but in the wee hours on 21/5/98 without informing anybody he left for his village Visheshara. On that day at about 11 a.m. Kotwar of village Visheshara came and informed Laliya Bai (PW-3), mother of the deceased, that if she wants to see face of her daughter, she should go to village Visheshara. Thereafter, Kotwar of village Sarbehra Ramhai informed Laliya Bai that her daughter has died in her in-laws house, on which Laliya Bai along with her sister Sonkunwar (PW-2) went to the

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village Visheshara and saw Saraswati on the spot. Sarpanch and Kotwar of the village were sitting. Sarpanch asked them that they can go and see body of Saraswati. They saw that there were injuries on waist and gluteal region, which raised doubt, they asked the accused not to burn the body, they went and reported the matter to the police station Pendra Road, on which they were informed that the matter relates to the Marwahi police station, by that time night had already set in, therefore, they returned back in village Sarbehra. In the night Ratiram had already returned and he was informed about the incident i.e. death of Saraswati. Thereafter, Ratiram and his wife went to the police station Marwahi and lodged merg intimation Ex.-P/1. The station house officer police station went to the village Visheshara, after giving notice to the Panchas, prepared inquest Ex.-P/3 on the body of Saraswati. At the time of preparation of inquest, panchas who were present on the spot were of the opinion that Saraswati has been murdered by inserting a Lathi in her vaginal part. The body of Saraswati was sent for postmortem examination where Dr. A.R. Karoriya (PW-10) with Dr. S.P. Shukla conducted the postmortem and prepared postmortem report Ex.-P/10 and opined that cause of death was hypovolaemic shock due to excessive haemorrhage from vagina, cervix and uterus. After receiving postmortem report, First Information Report Ex.-P/11 was registered.

After completion of the investigation, charge sheet was filed against the accused in the court of Judicial Magistrate, Pendra Road, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

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The prosecution in order to establish the charge against the accused examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he has been implicated merely on the suspicion. On the date of the incident he was not at his residence, since last 15 days he was in Deori Khurd at the residence of Santu. Saraswati was not well. There was bleeding on account of which she became weak and there was swelling on her body. There were wounds in the vaginal part, therefore, she died. Two witnesses namely DW-1 Mangooradhin Bai and DW-2 Santu Ram were examined in defence. Learned Additional Sessions Judge after hearing counsel for the respective parties, perusing the record, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties and perused the judgment and record of the trial Court.

At the outset, learned counsel for the accused/appellant submitted that death of deceased Saraswati was not homicidal. She was suffering from illness and on account of bleeding she became weak, even wounds developed in private parts and, therefore, she died.

On the other hand, learned counsel for the respondent/State supported the judgment of the trial Court.

In order to appreciate arguments advanced by learned counsel for the appellant, we have perused post mortem report Ex. P-10 as also evidence of Dr. A.R. Karoriya (PW-10) one of the doctors who conducted post mortem on the body of Saraswati. He has stated that on 23.5.1998

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he conducted post mortem on the body of the deceased, there were miggots in the body. Body was putrefied and smell was emanating from the body, body was in swollen condition, there was swelling on her private parts, there were contusions in both gluteal region three in number which appeared to be ante mortem in nature. Four contusions in the infrascapular region covering the both sides of thorax (posterior aspect). On account of injuries on private parts and excessive bleeding and shock Saraswati died. In his opinion death was homicidal in nature. In cross-examination he has stated that injuries found on the private parts were unnatural, therefore, he has opined that death was homicidal. He has further stated that there was clotted blood and there were injuries on private parts, such injuries could not have been caused on account of menstruation cycle. Doctor has categorically stated that injuries which were found on the private parts, gluteal region as also infrascapular region establish the fact that death was homicidal in nature. There is no explanation coming forth from the accused that how contusions were present on the body of Saraswati over gluteal as well as infrascapular region. These injuries could not be caused on account of illness. These injuries coupled with the evidence of PW-5 Ramcharan who has stated that accused made extra judicial confession before him that he caused injuries to his wife by inserting a Lathi in her private parts establishes that death of the deceased was homicidal in nature.

As far as the involvement of the accused/appellant in crime in question is concerned, in this case there is no direct or ocular evidence. The whole case rests on the circumstantial evidence. In order to base conviction on the circumstantial evidence, the Hon'ble Apex Court in the

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matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** held that:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

The prosecution has tried to establish the charge against the accused on the basis of following circumstances:-

(i) The accused made extra judicial confession before PW-5 Ramcharan and other persons;

(ii) Homicidal injuries were found on the body of the deceased.

Learned counsel for the accused/appellant argued that at the time of death of the deceased accused was not present in his house which is established by the evidence of defence witnesses.

Even though, DW-2 Santu Ram has stated that since last 15 days the accused was working at his residence but his evidence cannot be believed in the face of evidence of Ramcharan PW-5 who has stated that when they went to the house of the accused after hearing the death of Saraswati, wife of the accused, the accused was present in the house. On

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inquiry the accused in the first instance said that he has not committed any crime. However, thereafter, when they took Mahavir aside and inquired from him, then he said that he has committed the murder of his wife by inserting a Lathi in her vagina. Now the question remains whether the confession was voluntary and true?

Learned counsel for the appellant further submitted that at the time of making extra judicial confession police was present, therefore, extra judicial confession made by the accused cannot be said to be voluntary.

But the evidence of PW-5 Ramcharan shows that even though police came in the house initially the accused did not disclose anything and denied the crime. Thereafter, he was taken aside where the accused came out with a confession that he has committed the murder of his wife by inserting a Lathi in her vaginal part. Therefore, when the accused was taken aside, there he disclosed this fact to the villagers, as such it cannot be held that the said extra judicial confession was made in presence of the police. As far as truthfulness of the confession is concerned, that finds support from the medical evidence in which the doctor has stated that there were injuries on gluteal as well as infrascapular region and injuries were also in vaginal part. The said injuries were unnatural which cannot be self inflicted. Therefore, in the first instance, the accused made extra judicial confession that he caused those injuries by inserting a Lathi in the private part of the deceased which stands corroborated by the medical evidence, therefore, extra judicial confession made by the accused was voluntary and true. PW-5 Ramcharan has stated that the accused was present in the house, therefore, defence of the accused that he was not

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present in the house at the time of commission of crime is belied by the evidence of PW-5.

As far as second circumstance is concerned, as has been discussed in earlier part of the judgment about the evidence of doctor who has stated that homicidal injuries on gluteal as well as infrascapular region and vaginal part were found, those injuries cannot be self inflicted, as such this also supports the fact that the injuries were inflicted by the accused.

Learned counsel for the accused/appellant relied upon the judgment of the Apex Court in the matter of **Ashish Batham Vs. State of M.P. reported in 2003 (1) MPHT 1 (SC).**

We have perused the said judgment wherein it has been held that mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required.

In the present case, as has been discussed earlier, the accused made extra judicial confession before PW-5 Ramcharan and the villagers. PW-5 is an independent witness. He has no animosity or grudge against the accused so as to implicate him in serious crime like murder that too of his own wife. Moreover, homicidal injuries were found on the body, the plea of the accused that he was not at the residence at the time of commission of the crime, is not established. In these circumstances, based on extra judicial confession, homicidal injuries on the body of the deceased and the fact that crime was committed in the house of the accused, irresistible conclusion can be drawn that accused was the author

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of the crime in question as there was none else to cause death of Saraswati.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court. The appeal being devoid of merit is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge